Civil Misc.Appeal No.112/2001
Smt. Prem Bai & Ors. Vs. Heeralal & Ors

Date of Order ::: 21/09/05

Hon'ble Mr. Justice Ajay Rastogi

Mr. S.L.Songara, for appellant (claimaints)
Mr. Rakesh Bhargava, for respondents.

It is a claimants' appeal for enhancement of compensation awarded by MACT cum Addl. District Judge, Chhabra (Baran) on 12/03/96 in claim application No.23/94.

Claimants are wife and children who were dependent upon deceased Krishna Gopal. The deceased was a Government servant and while he was coming on motor bike from his village on way to Atru, tractor No.RJ-28/R/0554 coming from opposite side in a rash & negligent driving, had hit the motor bike, on account of which, an accident took place resulting into his death. The Tribunal after taking note of monthly salary of deceased as Rs.4,000/- and after deducting 1/3rd towards personal expenses, assessed monthly financial dependency of claimants of Rs.3,000/- but while finally awarding compensation, deducted family pension which was payable to the claimant (wife of deceased), under relevant service Rules.

Only contention advanced by Shri S.L.Songara, Counsel for claimants is that while computing financial dependency to the family of the deceased, family pension payable to claimant wife has not to be adjusted towards payment of compensation and in support of his contention, he placed reliance upon decision of this Court in ***Smt.Suki Bai Vs. Hem Singh (1993(1) WLN 40)*** wherein it has been held that family pension payable to claimant

cannot be considered as permissible deduction while computing compensation.

Counsel for respondents has fairly conceded to settled legal position that family pension payable to the claimant is otherwise not deductible while determining compensation under the Motor Vehicles Act, 1988.

In view of settled legal position, enhancement of compensation needs to be made. Accordingly, the claimants are entitled to enhanced compensation of Rs.1,44,000 only (Rs.3,000/-x12x8=Rs.2,88,000/+Rs.12,000/ (towards love & affection to each of claimants)= Rs.3,00,000/- minus Rs.1,56,000/- awarded by the Tribunal).

Consequently, this appeal is allowed and the claimants are entitled to enhanced compensation of Rs.1,44,000/- which shall also carry interest @ 9% per annum from the date of claim petition till actual payment. Enhanced compensation with interest shall be deposited by Insurance Company through A/c payee bank draft before the Tribunal within two months. The Tribunal is further directed to deposit the enhanced compensation in Monthly Income Scheme of Post office for a term of six years in the name of wife-claimant who will be entitled to receive monthly interest on post office MIS account supra as well as full amount of MIS on its maturity.

No order as to costs.

(Ajay Rastogi), J.

K.Khatri/112CMA2001.